



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20543

Via Certified Mail, Return Receipt Requested

FEB 08 2005

**Jody Novacek, in her personal capacity
1221 Lakeridge Lane
Irving, Texas 75063**

RE: MUR 5472

Dear Ms. Novacek:

On January 31, 2005, the Federal Election Commission found that there is reason to believe that you, in your personal capacity, knowingly and willfully violated 2 U.S.C. §§ 433(a), 434(a) and 441h(b), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such

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Jody Novacek, in her personal capacity
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counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Alexandra Dumas, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosures
Factual and Legal Analysis

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1
2 **FEDERAL ELECTION COMMISSION**

3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENT:** Jody Novacek, in her official and MUR: 5472
6 personal capacities
7
8
9

10 **I. GENERATION OF THE MATTER**

11
12 This matter was generated by a complaint filed with the Federal Election
13 Commission by Jill Holtzman Vogel, Chief Counsel, Republican National Committee.
14 See 2 U.S.C. § 437g(a)(1).

15 **II. BACKGROUND**

16 In 2004, Jody Novacek, who since 1982 has been involved in Republican Party
17 activities including fundraising, voter identification, advocacy, and get-out-the-vote
18 activity, formed a committee called "The Republican Victory Committee, Inc." The
19 Committee is incorporated in the State of Texas. "The Republican Victory Committee,
20 Inc." has used different variations of its name on different occasions and the Committee's
21 purpose is unclear; indeed, the Committee's own public filings are not consistent.

22 For example, on July 2, 2004, the Committee filed an initial Statement of
23 Organization with the Commission under the name "The Republican Victory Committee
24 Inc." The Statement of Organization was dated May 10, 2004; according to the
25 instructions for this form, this date should have reflected the date the group became a
26 political committee. The signature line was dated June 30, 2004 and the form listed Jody
27 Novacek as treasurer, custodian of records and designated agent. The form indicated that

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1 the Committee was a separate segregated fund, but did not specify with which entity it
2 was affiliated.

3 Therefore, on August 4, 2004, the Reports Analysis Division ("RAD") sent the
4 Committee a Request For Additional Information asking with which entity it was
5 affiliated as a separate segregated fund. On September 1, 2004, the Committee submitted
6 an amended Statement of Organization indicating that it was neither a separate segregated
7 fund nor a party committee. The Amended Statement of Organization was filed under
8 the name "The Republican Victory Committee" and the form again listed Jody Novacek
9 as treasurer, custodian of records and designated agent. The Committee appears to
10 conduct business, however, under the names "Republican Victory Committee" and
11 "Republican Victory 2004 Committee."

12 The Committee also has vacillated regarding the type of organization it claims to
13 be. The Committee says that, in the late Winter or early Spring of 2004, it initially filed
14 with the IRS a Form 1023 Application for Recognition of Exemption under Section
15 501(c)(3). However, the Committee says that it later contacted the IRS, withdrew the
16 Form 1023, and, on May 10, 2004, filed electronically with the IRS a Form 9971 Political
17 Organization Notice of Section 527 Status. This form was filed under the name "The
18 Republican Victory Committee, Inc.," listed Jody Novacek, Freda Novacek and Jason
19 Novacek as directors of the Committee, and listed Jody Novacek as custodian of records.
20 That filing claimed that the Committee was "[a] conservative, Pro-Republican Group
21 (sic) focusing on voter mobilization and issue advocacy at the state and local levels."
22 There is no record of any other filings by the Committee on the IRS website.

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1 The Committee purports to be a "national organization" that is "conservative" and
2 "pro-Republican" and whose declared intent is to assist state and local elections.

3 However, the information provided by the Committee on various occasions presents
4 contradictory evidence as to whether the organization was intended to influence, and in
5 fact was influencing, federal elections. For example, at times, the Committee stated that
6 its activities included voter mobilization and issue advocacy at the state and local levels,
7 and that it would support Republican candidates at the state and local level. Yet other
8 statements indicated that the Committee's actions were intended to and would affect
9 federal elections.

10 The Committee also has failed to file any reports with the Commission or IRS
11 regarding its finances. The Committee has, however, filed reports with the Texas Ethics
12 Commission from January 2004 through the end of July 2004, apparently under the name
13 "Republican Victory Committee." Those reports indicated nominal receipts and
14 disbursements for most of the covered periods, but stated that the Committee received
15 \$5,135 in receipts and made \$5,180 in disbursements for the period ending February
16 2004. The Commission is aware of only one political donation for \$100 made by the
17 Committee at the end of February 2004, as listed on a report filed by the recipient of that
18 donation, Jason Moore.¹

¹ Jason Moore ran for a seat in the Texas House of Representatives, 81st District and was Chairman of the Texas Young Republican Federation.

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II. FACTUAL AND LEGAL ANALYSIS

A. *Jody Novacek May Have Knowingly and Willfully Made Fraudulent Misrepresentations in the Context of Soliciting Contributions and Donations*

It appears that Ms. Novacek and the Committee embarked upon a strategy to solicit contributions and donations by making fundraising calls through telephone banks and by following up on these phone calls with direct mailings. Those calls and mailings, however, appear to have fraudulently misrepresented the Committee as affiliated with the Republican Party. The Act, as amended by BCRA, states that no "person" shall:

- (1) fraudulently misrepresent the person as speaking, writing, or otherwise acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations; or
- (2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1).

2 U.S.C. § 441h(b).

To violate section 441h, the Act requires that the violator had the intent to deceive, but does not require that the violator sustain all elements of common law fraud. See MUR 3690; MUR 3700.² "Unlike common law fraudulent misrepresentation, section 441h gives rise to no tort action..." and therefore proof of justifiable reliance and damages is not necessary. See Explanation and Justification, 11 C.F.R. § 110.16, 67 Fed. Reg. 76,969 (Dec. 31, 2002); *Nader v. United States*, 527 U.S. 1, 24-25 (1999) (citing *United States v. Stewart*, 872 F.2d 957, 960 (10th Cir. 1989)). The BCRA amendments were enacted in response to concerns that the prior version of the statute did not permit

² In the past, the Commission has held on occasion that the presence of a disclaimer stating the person and/or entity that paid for and authorized a communication negates intent. See MUR 2205; MUR 3690; MUR 3700. As will be discussed in greater detail *infra*, the Committee did place a disclaimer on its mailing. See *infra*. However, in MUR 5089, the Commission more recently rejected the notion that such a disclaimer automatically negates intent and found reason to believe that a committee violated section 441h even with the presence of a disclaimer.

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1 the Commission to take action against persons not associated with a candidate or a
2 candidate's authorized committee. The amendment was necessary because contributors
3 often were solicited for money and believed their contributions and donations were
4 benefiting a specific candidate, only to learn later that the funds were diverted to another
5 purpose. The harm was therefore both to the candidate and the contributor. See

6 *Explanation and Justification*, 11 C.F.R. § 110.16, 67 Fed. Reg. 76,969 (Dec. 31, 2002).

7 Ms. Novacek represented the Committee in a manner that would lead a reasonable
8 person to think the Committee's solicitations were either from the Republican Party or
9 from an entity affiliated with the Party. Courts have held that even absent an express
10 misrepresentation, a scheme devised with the intent to defraud is still fraud if it was
11 reasonably calculated to deceive persons of ordinary prudence and comprehension. See
12 *United States v. Thomas*, 377 F.3d 232, 242 (2d Cir. 2004), citing *Silverman v. United*
13 *States*, 213 F.2d 405 (5th Cir. 1954). Although the use of the word "Republican" in its
14 name alone is not dispositive, when combined with the other factors listed below, use of
15 "Republican" in its name likely led reasonable people to believe that the Committee was
16 affiliated with the Republican Party. Furthermore, the following statements were used in
17 the Committee's direct mailings:

18 • "Contributions or gifts to the *Republican Party* are not deductible as
19 charitable contributions."

20 • "I'm grateful *our Party* can count on your help to support Republicans
21 across the country win elections."

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1 • ***"The Republican Party can count on my support to help candidates at***
2 ***the state and local level. I'm proud to help our Party prepare for the***
3 ***November election."***

4 **Here, a reasonable person reading those statements -- particularly the non-deductibility**
5 **notice, which deals with the effect of the contribution and cannot be dismissed as**
6 **rhetorical flourish -- would have believed Ms. Novacek was soliciting money on behalf**
7 **of the Republican Party.**

8 **Although not as clearly as the mailings, the telephone call solicitations also would**
9 **have led a reasonable person to believe that the Committee was acting on behalf of the**
10 **Republican Party. In the Committee's telephone call solicitations, the callers appear to**
11 **have been instructed to speak only with registered Republicans. Once they were certain**
12 **they were speaking with a registered Republican, the callers asked for support for "our**
13 **state candidates and President Bush's agenda" because "[i]t's going to be tough to beat**
14 **the Democrats this fall." The caller explained, "Your financial help is critical so**
15 **Republicans can win...." The callers never stated that they were not affiliated with the**
16 **Republican Party, but their statements would have led a reasonable person to believe that**
17 **they were so affiliated.**

18 **If a recipient expressed confusion during the call, the caller was directed to use a**
19 **series of "rebuttals," drafted in advance by Jody Novacek. The rebuttals set forth**
20 **answers to possible questions by call recipients, such as questions regarding for what**
21 **purpose the money would be used; questions asking who and what the committee was; or**
22 **statements expressing unhappiness with President Bush or the war in Iraq. However,**
23 **only if the recipient of the call explicitly articulated some hesitation or confusion similar**

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1 to the questions set forth above did the caller explain who or what the Committee was;
2 indicate in even an indirect way that the Committee was not affiliated with the
3 Republican Party, the Republican National Committee or President Bush; or indicate for
4 what purpose the donated money would be used.

5 Furthermore, Ms. Novacek's actions appear to have been knowing and willful.
6 The phrase knowing and willful indicates that "actions [were] taken with full knowledge
7 of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec.
8 H 2778 (daily ed. May 3, 1976); see also *Federal Election Comm'n v. John A. Dramani*
9 *for Cong. Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986) (distinguishing between
10 "knowing" and "knowing and willful"). A knowing and willful violation may be
11 established "by proof that the defendant acted deliberately and with knowledge" that an
12 action was unlawful. *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). In
13 *Hopkins*, the court found that an inference of a knowing and willful violation could be
14 drawn "from the defendants' elaborate scheme for disguising their ... political
15 contributions...." *Id.* at 214-15. The court also found that the evidence did not have to
16 show that a defendant "had specific knowledge of the regulations" or "conclusively
17 demonstrate" a defendant's state of mind," if there were "facts and circumstances from
18 which the jury reasonably could infer that [the defendant] knew her conduct was
19 unauthorized and illegal." *Id.* at 213 (quoting *United States v. Bordelon*, 871 F.2d 491,
20 494 (5th Cir.), cert. denied, 439 U.S. 838 (1989)). Finally, "[i]t has long been recognized
21 that 'efforts at concealment [may] be reasonably explainable only in terms of motivation
22 to evade' lawful obligations." *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672,
23 679 (1959)).

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1 The Commission previously has made knowing and willful and probable cause
2 findings against a committee and individuals that violated 2 U.S.C. § 441h. In MUR
3 4919 (East Bay Democrats), the Commission found probable cause to believe a violation
4 of section 441h occurred when a committee's campaign materials provided misleading
5 information to potential contributors. In that case, a Republican committee created a
6 fictitious committee using the word "Democratic" in the name of the committee and
7 mailed campaign materials to registered Democrats, requesting that they not vote for the
8 Democratic candidate. The mailing alleged that the Democratic candidate abandoned
9 "our party," implying that the sponsor of the mailing was affiliated with the Democratic
10 Party. The mailing also used the name of a local Democratic leader as the signator.
11 Finally, the letter conveyed actual Democratic Party views, in an attempt to make the
12 communications appear that they were legitimate communications of a local committee
13 of the Democratic Party.

14 In this case, Ms. Novacek and the Committee used the word "Republican" as part
15 of the Committee's name, implying some type of affiliation with the Republican Party or
16 RNC. Its mailing referred to "our Party" and even explicitly referenced the Republican
17 Party in an attempt to convince the reader the mailing was from the Republican Party.
18 The scripts produced by Ms. Novacek and the Committee provide for rebuttals and more
19 detailed and descriptive explanations of the Committee (for example, stating it was not
20 affiliated with or working on behalf of the Republican Party or the Bush-Cheney
21 campaign) -- but only if the recipient of the call specifically asked the question.
22 Furthermore, the fact that these descriptions had already been drafted and incorporated
23 into the call script demonstrates Ms. Novacek's and the Committee's knowledge that the

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1 phone calls likely would be confusing to the intended recipients, and yet failed
2 affirmatively to address this potential confusion.

3 Finally, Ms. Novacek's and the Committee's failure to file reports with the
4 Commission indicating on what, if anything, the money raised has been spent may be
5 probative of the Committee's intent to misrepresent itself to the public. *See infra*. As
6 described in further detail below, the Committee has indicated that it has engaged in
7 \$50,000 worth of activity, but has failed to disclose to the Commission the source of its
8 money and/or the methods by which it has expended any money. *See United Health*
9 *Care Corp. v. American Trade Ins. Co.*, 88 F.3d 563 (8th Cir. 1996) (holding that
10 evidence of planning and intent to deceive was demonstrated by review of the money
11 trail, which showed the money was not used for its intended purpose). It is unknown
12 whether the money was placed in a bank account separate from other monies or if it was
13 commingled with Ms. Novacek's other accounts. In fact, the only indication of any
14 political expenditure is a \$100 donation to a state candidate in Texas, as reported by that
15 candidate (not the Committee). Ms. Novacek's actions can be used to infer that she
16 knowingly and willfully attempted to fraudulently misrepresent the Committee's true
17 identity to those from whom she was soliciting money.

18 Accordingly, the Commission found reason to believe that Ms. Novacek, in her
19 official and personal capacities, knowingly and willfully violated 2 U.S.C. § 441h(b)(1).

20 C. *Ms. Novacek Participated in a Scheme or Plan to Violate 2 U.S.C.*
21 *§ 441h(b)(1).*
22

23 In ~~convention~~ of 2 U.S.C. § 441h(2), Ms. Novacek also participated in a
24 scheme with the Committee, BPO, Inc. and BPO Advantage, LP to violate 2 U.S.C.
25 § 441h(1). Subsection 2 requires that violations of 2 U.S.C. § 441h(b)(1) be knowing and

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1 willful.³ As stated above, the phrase knowing and willful indicates that actions were
2 taken with knowledge of the facts and with recognition that the action is prohibited by
3 law. 122 Cong. Rec. H 2778 (daily ed. May 3, 1976); *Federal Election Comm'n v. John*
4 *A. Damesi for Cong. Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986). Furthermore, efforts
5 at concealment may demonstrate a defendant's state of mind and intent to violate the law.
6 See *United States v. Hopkins*, 916 F.2d 207, 214-15 (5th Cir. 1990).

7 BPO, Inc. is a company owned and operated by Jody Novacek. BPO Advantage,
8 LP is a marketing and consulting company also owned by Jody Novacek and listed as an
9 affiliate of BPO, Inc.⁴ According to press reports, Ms. Novacek hired one of the BPO
10 entities to manage the Committee's fundraising and pay the Committee's telemarketing
11 bills. The BPO entity, in turn, hired Apex to conduct the telemarketing calls. It is
12 unknown at this time which entity (BPO, Inc. or BPO Advantage, LP) paid Apex or
13 conducted business with Apex, but it appears that the companies are virtually
14 interchangeable: Dun and Bradstreet lists the companies as affiliated entities; they are
15 both run by Jody Novacek; and they both operate out of Ms. Novacek's home. It is also
16 unknown at this time whether either BPO entity benefited financially from its
17 arrangement with the Committee.

18 Ms. Novacek clearly did business and was familiar with the BPO entities. In fact,
19 it appears that Ms. Novacek was a representative of the BPO entities: Ms. Novacek is the
20 only representative referenced in the BPO entities' Dun and Bradstreet reports, and their

³ Section 441h(b)(2) requires that a respondent "willfully and knowingly" participate in, or conspire to participate in, a plan, scheme or design to engage in fraudulent solicitation. Thus, "knowing and willful" is an element of the statute rather than a separate basis for increased civil and criminal liability under 2 U.S.C. § 437g(d)(1)(C).

⁴ Collectively, BPO, Inc. and BPO Advantage, LP will be referred to as "the BPO entities."

addresses and telephone numbers are the same as Ms. Novacek's home (which is the same address and telephone number as the Committee). Therefore, from the evidence available at this time, it appears that Ms. Novacek knowingly and willfully participated in a scheme or plan with the Committee and the BPO entities to execute the telephone call script.

Accordingly, the Commission found reason to believe that Ms. Novacek, in her official and personal capacities, knowingly and willfully violated 2 U.S.C. § 441h(b)(2).

D. The Solicitations Failed to Carry Appropriate Disclaimers.

Any public communication by any person that solicits any contribution or for which a political committee makes a disbursement must contain a disclaimer. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a). A public communication, for this purpose, includes any communication by mailing or phone bank. 11 C.F.R. § 100.26. A "telephone bank" means more than 500 telephone calls of an identical or substantially similar nature within a 30-day period. 11 C.F.R. § 100.28. "Substantially similar" means communications that include substantially the same template or language. *Id.* If the communication is not authorized by a candidate, a candidate's authorized political committee or any agent, the disclaimers must state the name and street address, telephone number or World Wide Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3); 11 C.F.R. § 110.11(b)(3). The disclaimer must be presented in a clear and conspicuous manner, be of sufficient type size to be clearly readable, and be contained in a printed box set apart from the other content of the communication. 2 U.S.C. § 441d(c); 11 C.F.R. §§ 110.11(c)(1), 110.11(c)(2)(i)-(ii).

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1 Here, the call script used by the Committee did not contain any disclaimer as to
2 who paid for or authorized the calls, despite the fact that they were direct solicitations for
3 contributions and donations. The exact number of calls made and the period in which
4 those calls were made are unclear at this time.

5 The mailings sent by the Committee contained a disclaimer stating that the
6 mailing was paid for by the Republican Victory 2004 Committee and was not authorized
7 by any candidate or candidate committee. However, the disclaimer was not set aside in a
8 printed box apart from other content of the communication. Failure to include a box
9 around the disclaimer is a *per se* violation of the Act. Accordingly, the Commission
10 found reason to believe that Jody Novacek, in her official capacity, violated 2 U.S.C.
11 §§ 441d(a) and (c).

12 *E. Jody Novacek Failed to File Appropriate Reports on Behalf of the*
13 *Committee with the Commission.*
14

15 The Committee apparently existed as early as January 2004, although it is unclear
16 at this time when the Committee began soliciting contributions and donations. The Act
17 provides that a political committee shall file a Statement of Organization within 10 days
18 of becoming a political committee, meaning that it received contributions aggregating in
19 excess of \$1,000 per year or made expenditures aggregating in excess of \$1,000 per year.
20 2 U.S.C. §§ 431(4), 433(a). However, the Committee did not file a Statement of
21 Organization with the Commission until June 30, 2004. The Committee has admitted
22 that it should have filed a Statement of Organization sooner and that its June filing was
23 late.

24 The Act also requires that a treasurer of a political committee file reports of
25 receipts and disbursements. 2 U.S.C. § 434(a)(1). Furthermore, all committees, other

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1 than an authorized candidate's committee, shall file quarterly reports in a year in which a
2 regularly scheduled general election is held; the last day for filing is the 15th day after the
3 last day of each quarter, or October 15, 2004 for the third quarter. 2 U.S.C.

4 § 434(a)(4)(A)(i). We have no documentary evidence regarding the amount of money
5 collected by Ms. Novacek and the Committee, or whether any significant disbursements
6 or political donations were made by the Committee. However, in October 2004, Ms.
7 Novacek informally told RAD that the Committee has engaged in more than \$50,000
8 worth of activity. From the statements in its mailings and phone scripts, it appears that
9 the Committee, at least in part, promoted President Bush directly; intended to affect
10 federal elections; targeted Republicans for voter registration; and attempted to conduct
11 voter mobilization activities. Accordingly, those funds were subject to allocation among
12 federal and nonfederal candidates and could be subject to federal contribution limitations.
13 See AO 2003-37 at 2-4, 9-10, 13, 15, and 20; 11 C.F.R. §§ 106.1, 106.6(b), 106.6(c).

14 Despite repeatedly acknowledging that it was and is required to file reports with
15 the Commission regarding its finances, to date, the Committee has failed to file *any*
16 financial report with the Commission. These repeated failures occurred despite the
17 Commission's explicit instructions directly to Ms. Novacek. First, in May 2004, Ms.
18 Novacek admitted that she knew the Committee was required to file a report with the
19 Commission in July; however, the Committee did not file a report in July 2004. Then, in
20 July 2004, despite her previous acknowledgement, Ms. Novacek claimed that she only
21 learned on June 30, 2004 that she was required to file with the Commission any reports
22 for the Committee. Ms. Novacek further claims that she then contacted the
23 Commission's Office of Public Information, which purportedly advised her that the

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1 report would be filed late and, therefore, she should wait to file the report until after the
2 third quarter. Even in the unlikely event that the Office of Public Information actually
3 gave this advice to Ms. Novacek and the Committee, Ms. Novacek knew, as of June 30,
4 2004 at the latest, that she was required to file with the Commission any reports on behalf
5 of the Committee.

6 Second, long after that conversation with the Commission's Office of Public
7 Information, on the morning of October 14, 2004, Ms. Novacek contacted RAD, stating
8 that she had only recently learned that the Committee was required to file reports with the
9 Commission and requested assistance from RAD.⁵ At that time, Ms. Novacek informed
10 the RAD analyst that the Committee had engaged in more than \$50,000 worth of activity,
11 which prompted the RAD analyst to advise Ms. Novacek that the Committee was
12 required to file electronically with the Commission. Ms. Novacek informed the RAD
13 analyst that she had yet to even request an electronic password from the Commission.
14 The RAD analyst advised Ms. Novacek to fax a request for an electronic password
15 immediately and to file the report (even if the report would be filed after the October 15,
16 2004 deadline) as soon as she received the password. To date, it does not appear that Ms.
17 Novacek has requested a password and she has not submitted any report to the
18 Commission. On November 2, 2004, RAD sent the Committee via Ms. Novacek a
19 Notice of Failure to File. On December 17, 2004, RAD sent the Committee via Ms.
20 Novacek a second Notice of Failure to File. To date, Ms. Novacek has not responded to
21 either Notice.

⁵ Ms. Novacek also asked the RAD analyst whether the Committee could accept unlimited contributions from one source and whether the Committee could accept corporate contributions. The RAD analyst advised Ms. Novacek of the contribution limitations and directed her to the BCRA supplement on the Commission's website for additional information.

1 The Commission repeatedly instructed Ms. Novacek directly when and how to
2 submit the Committee's reports to the Commission. Furthermore, the Committee
3 apparently has engaged in a significant amount of activity for the calendar year involving
4 more than \$50,000. Except for the minimal reports filed with the Texas Ethics
5 Commission (which do not demonstrate \$50,000 worth of activity and which were last
6 filed at the end of July 2004), that money is unaccounted for by the Committee and Ms.
7 Novacek. To date, the Committee has failed to file any report with the Commission
8 reflecting any contributions or donations received, disbursements made, or cash on hand,
9 other than the Statement of Organization filed in May and amended in September.

10 Finally, it appears that the Committee and Ms. Novacek committed knowing and
11 willful violations of the Act. The Committee's response states that the Committee is a
12 first-time filer and implies that it should be excused from any penalties for its violations
13 of the Act. However, the Committee's and Ms. Novacek's actions demonstrate that
14 failure to file with the Commission proper reports was not accidental: by her own
15 account, Ms. Novacek had been repeatedly informed that she was required to file with the
16 Commission reports on behalf of the Committee and failed to do so. Indeed, RAD has
17 notified the Committee through Ms. Novacek on two separate occasions that it failed to
18 file appropriate documents with the Commission, but the Committee and Ms. Novacek
19 did not respond to either notice. If Ms. Novacek was "confused," as she apparently
20 alleges in her response, one would think she would have made at least an attempt to
21 inquire about why they were receiving non-filer notices. Moreover, in light of the
22 potential section 441h(b) violations, the Committee's failure to file reports of receipts and
23 disbursements with any authority except the Texas Ethics Commission, and its failure to

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1 file reports with any agency at all after July 2004, raises questions as to whether the
2 Committee and Ms. Novacek are intentionally hiding what they have done with the
3 money they have collected. Accordingly, the Commission found reason to believe that
4 Ms. Novacek, in her official and personal capacities, knowingly and willfully violated
5 2 U.S.C. §§ 433(a) and 434(a).

6 Based on the foregoing information, the Commission found reason to believe that
7 Jody Novacek, in her official and personal capacities, knowingly and willfully violated
8 2 U.S.C. §§ 433(a), 434(a) and 441k(b). Furthermore, the Commission found reason to
9 believe that Jody Novacek, in her official capacity, violated 2 U.S.C. §§ 441d(a) and
10 441d(c).

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